

Pam.  
Internat.  
rel.

For. policy

1112

Pamphlet No. 28  
Series of 1923-24  
June, 1924

# TEXT OF THE DRAFT TREATY OF DISARMAMENT AND SECURITY

PREPARED BY AN AMERICAN COMMITTEE  
AND SUBMITTED OFFICIALLY BY THE  
COUNCIL OF THE LEAGUE OF NATIONS TO  
THE GOVERNMENTS REPRESENTED BY IT

---

WITH A COMMENTARY PREPARED  
IN CONSULTATION WITH

DR. JAMES T. SHOTWELL

*for the*

FOREIGN POLICY ASSOCIATION

NATIONAL HEADQUARTERS

NINE EAST FORTY-FIFTH STREET

NEW YORK

**T**HE Council of the League of Nations at its June meeting took action of an unprecedented nature in deciding unanimously to submit as an official document of the League a report on the limitation of armaments prepared by an American Committee of private citizens. The action of the Council was doubtless partly due to the list of distinguished Americans who have coöperated in the preparation of the document. The group consists of DR. JAMES T. SHOTWELL, professor of History at Columbia University, a member of the American delegation at the Paris Peace Conference and a commissioner of the Labor Section of the Treaty; GENERAL TASKER H. BLISS, American representative on the Supreme War Council; DR. ISAIAH BOWMAN, executive head of the technical experts of the American delegation at the Paris Peace Conference; DR. JOSEPH P. CHAMBERLAIN, professor of Public Law at Columbia University; PROFESSOR JOHN BATES CLARK, former Director of the Division of Economics and History of the Carnegie Endowment for International Peace; DR. STEPHEN P. DUGGAN, Director of the Institute for International Education of the Carnegie Foundation; GENERAL JAMES G. HARBORD, former Chief of Staff of the American Army; FREDERICK P. KEPPEL, former Assistant Secretary of War; DAVID HUNTER MILLER, legal adviser to the United States Government at the Paris Peace Conference; and DR. HENRY S. PRITCHETT, President of the Carnegie Foundation.

A personal link between this group and influential personages in Europe was furnished by the fact that Dr. Shotwell had discussed the problems in question with responsible European statesmen, cabinet members, military and naval experts and other important personages in France, England, Belgium, Italy, Germany, Austria, Hungary and Czecho-Slovakia. The American group was entirely unofficial.

In view of the fact that the question of disarmament with which this Treaty deals will come up before the Assembly of the League this year in September, it is very important that the discussion should take concrete form as soon as possible and the results communicated to the Committee which prepared the Treaty, or to the Foreign Policy Association.

The proposed treaty has already aroused unusual interest both in this country and Europe, and is distributed by the Foreign Policy Association in the hope of bringing forth wide and constructive discussion.

# DRAFT TREATY

*of*

## DISARMAMENT AND SECURITY

---

**T**HE HIGH CONTRACTING PARTIES, being desirous of promoting peace and of lessening the danger of war by reduction and limitation of armaments, agree to this treaty.

### PART I.

#### GENERAL MEASURES

##### CHAPTER I.

###### OUTLAWRY OF AGGRESSIVE WAR

Article 1.—The High Contracting Parties solemnly declare that aggressive war is an international crime. They severally undertake not to be guilty of its commission.

Article 2.—A State engaging in war for other than purposes of defense commits the international crime described in Article 1.

Article 3.—The Permanent Court of International Justice shall have jurisdiction, on the complaint of any signatory, to make a judgment to the effect that the international crime described in Article 1 has or has not in any given case been committed.

##### CHAPTER II.

###### ACTS OF AGGRESSION

Article 4.—The High Contracting Parties solemnly declare that acts of aggression, even when not resulting in war, and preparations for such acts of aggression, are hereafter to be deemed forbidden by international law.

Article 5.—In the absence of a state of war, measures of force by land, by sea or in the air taken by one State against another and not taken for purposes of defense or for the protection of human life shall be deemed to be acts of aggression.

Any signatory which claims that another signatory has violated any of the terms of this treaty shall submit its case to the Permanent Court of International Justice.

A signatory refusing to accept the jurisdiction of the Court in any such case shall be deemed an aggressor within the terms of this treaty.

Failure to accept the jurisdiction of the Court within four days after submission of a claim of violation of this treaty shall be deemed a refusal to accept the jurisdiction.

Article 6.—The Court shall also have jurisdiction on the complaint

of any signatory to make a judgment to the effect that there has or has not in any given case been committed a violation of international law within the terms of Article 4.

Article 7.—The Permanent Advisory Conference hereinafter mentioned shall from time to time consider the further codifying of the principles of international law relating to acts of aggression and preparations for such acts.

In this regard, the conference shall take into account the additional security to the signatories and the progressive disarmament which are by this treaty contemplated.

The recommendations of the conference shall be submitted to the High Contracting Parties for their adoption, and shall also be transmitted to the Permanent Court of International Justice.

## CHAPTER III.

### SANCTIONS

Article 8.—In the event of any H. C. P.\* having been adjudged an aggressor pursuant to this treaty, all commercial, trade, financial and property interests of the aggressor and of its nationals shall cease to be entitled, either in the territories of the other signatories or on the high seas, to any privileges, protection, rights or immunities accorded by either international law, national law or treaty.

Any H. C. P. may in such case take such other steps toward the severance of trade, financial, commercial and personal intercourse with the aggressor and its nationals as it may deem proper and the H. C. P. may also consult together in this regard.

The period during which any such economic sanction may be continued shall be fixed at any time by the Court at the request of any signatory.

In the matter of measures of force to be taken, each signatory shall consult its own interests and obligations.

Article 9.—If any H. C. P. shall be adjudged an aggressor by the Permanent Court of International Justice, such power shall be liable for all costs to all other H. C. P. resulting from its aggression.

## CHAPTER IV.

### DECREES OF THE PERMANENT COURT

Article 10.—The H. C. P. agree to accept the judgment of the Permanent Court of International Justice as to the fulfillment or violation of the contracts of this treaty.

Any question arising under this treaty is *ipso facto* within the compulsory jurisdiction of the Court.

Article 11.—If a dispute arising under this treaty shall be submitted to the Permanent Court of International Justice, it is for the Court to decide as to its jurisdiction and also whether or not its decree has been complied with.

\* High Contracting Party or Parties.

**PART II.**  
**DISARMAMENT**  
**CHAPTER I.**

REDUCTION AND LIMITATION OF ARMAMENT

Article 12.—The H. C. P.\* recognizing that excessive armaments constitute a menace of war mutually agree:

(i) To limit or reduce their armaments to the basis necessary for the maintenance of peace and national security.

(ii) To study the ways and means for future reduction of armaments either as between all signatories or as between any two of them.

**CHAPTER II.**

DEMILITARIZED ZONES

Article 13.—In order to facilitate the security and progressive disarmament contemplated by the present treaty, any H. C. P. may agree with one or more neighboring countries for the establishment of demilitarized zones.

**CHAPTER III.**

PERMANENT ADVISORY CONFERENCE

Article 14.—The H. C. P. will call a permanent advisory conference upon disarmament which shall meet not less than once every three years.

This conference shall, in addition to its functions as described in Article 7, publish periodical reports concerning the actual conditions of the armaments of the signatory States.

The conference shall advise the H. C. P. concerning measures to be taken to insure the carrying out of the principles of the present treaty and it may prepare supplementary treaties for the establishment of demilitarized zones and for the further promotion of disarmament and peace.

Article 15.—The Advisory Conference upon disarmament shall appoint a Permanent Technical Committee.

Article 16.—The Permanent Advisory Conference or its Permanent Technical Committee shall give advice on technical questions to the Permanent Court of International Justice at the request of said Court.

Article 17.—The expenses of the Permanent Advisory Conference and of its agencies shall be borne by the signatory powers in the proportions of their respective budgets for defense.

**PART III.**

INTERNATIONAL INFORMATION

**CHAPTER I.**

COMMISSION OF INQUIRY

Article 18.—By the terms of Article 8 of the Covenant of the League of Nations:

“The members of the League undertake to interchange full and frank information as to the scale of their armaments, their military,

\* High Contracting Party or Parties.



naval and air programs and the condition of such of their industries as are adaptable to warlike purposes.”

In order to facilitate the carrying out of the said engagement by the powers party thereto, the signatories hereto agree that there shall be maintained under the direction of the Council of the League of Nations a commission charged with the duty of making the necessary official examinations and reports.

Article 19.—The said commission shall proceed under such regulations as the Council of the League shall from time to time approve.

Article 20.—Subject to such regulations the members of the commission shall be entitled, when they deem it desirable, to proceed to any point within the territory of any signatory or to send sub-commissions or to authorize one or more of their members so to proceed on behalf of the commission.

Article 21.—The signatories hereto will give all necessary facilities to the said commission in the performance of its duties.

Article 22.—All reports made to the Council of the League by the said commission shall be communicated to the signatory powers.

## CHAPTER II.

### OPINIONS OF THE COUNCIL

Article 23.—The Council of the League, taking into account the reports and opinions of the said commission, shall at any time when requested by any signatory hereto, consider summarily whether (a) the armaments of any signatory to this treaty are in excess of those fixed under its provisions; or (b) the military or other preparations of any State are of such a nature as to cause apprehension of aggression or an eventual outbreak of hostilities.

Article 24.—If the Council shall upon such request be of the opinion that there is reasonable ground for thinking that a menace of aggression has arisen, the parties to the defensive agreements hereinafter mentioned may put into immediate execution the plan of assistance which they have agreed upon.

Article 25.—If the Council shall, upon such request, not be of opinion that a menace of aggression has arisen, a public report to the effect shall be made and in such case no signatory shall be under any obligation to put into execution any plan of assistance to which it is a party; but any signatory, believing itself to be threatened with a menace of aggression, notwithstanding the fact that the Council of the League has not been of such opinion, may forthwith notify the Council to that effect, and such signatory shall thereupon have full liberty of action in military or other preparations for defense, subject, however, to the limitations as to armament which are imposed by any treaty then in force other than this treaty and treaties dependent thereon.

## PART IV.

### TREATIES OF MUTUAL ASSISTANCE

Article 26.—The H. C. P.\* may conclude, either as between two of them or as between a larger number, agreements complementary

\* High Contracting Party or Parties.

to the present treaty, exclusively for the purpose of their mutual defense and intended solely to facilitate the carrying out of the measures prescribed in this treaty, determining in advance the assistance which they would give to each other in the event of any act of aggression.

Such agreements may, if the H. C. P.\* interested so desire, be negotiated and concluded under the auspices of the League of Nations.

Article 27.—Complementary agreements, as defined in the preceding article, shall, before being registered, be examined by the Council with a view to deciding whether they are in accordance with the principles of this treaty and of the Covenant.

In particular, the Council shall consider if the cases of aggression contemplated in these agreements are of a nature to give rise to an obligation to give assistance on the part of the other H. C. P.

The Council may, if necessary, suggest changes in the texts of the agreements submitted to it.

When recognized, the agreements shall be registered in conformity with Article 18 of the Covenant. They shall be regarded as complementary to the present treaty, and shall in no way limit the general obligations of the H. C. P. nor the sanctions contemplated against an aggressor under the terms of this treaty.

They will be open to any other H. C. P. with the consent of the signatory States.

Article 28.—In all cases of aggression, for which provision is made in the agreement constituting a defensive group, the H. C. P. which are members of such group may undertake to put into operation automatically the plan of assistance agreed upon between them; and in all other cases of aggression, or menace or danger of aggression, directly aimed at them, they will consult each other before taking action, and will inform the Council of the measures which they are contemplating.

## **PART V.**

### **PARTIES TO THE TREATY**

#### **CHAPTER I.**

##### **ACCESSION**

Article 29.— Any State, member or not of the League of Nations, may adhere to this treaty by depositing an act of adhesion with the Secretary General of the League, who shall at once inform the other signatories thereof.

#### **CHAPTER II.**

##### **WITHDRAWAL**

Article 30.—Any party to this Treaty may withdraw therefrom by depositing an act of withdrawal with the Secretary General of the League of Nations. Such withdrawal shall take effect one year after the deposit thereof and only as to the Party withdrawing.

\* High Contracting Party or Parties.

## CHAPTER III.

### RATIFICATION

Article 31.—The present Treaty shall be ratified and the instruments of ratification shall be deposited as soon as possible with the Secretary General of the League of Nations.

It shall come into force:

In Europe when it shall have been ratified by five European States, including France, Great Britain and Italy.

In Asia when it shall have been ratified by two Asiatic States, one of which shall be Japan.

In North America when ratified by the United States of America.

In Central America and the West Indies when ratified by one State in the West Indies and two in Central America.

In South America when ratified by four States in South America, one of which shall be either Argentina, Brazil or Chile.

In Africa and Oceania when ratified by two States in Africa and Oceania.

With regard to the H. C. P. which may subsequently ratify the Treaty, it will come into force at the date of the deposit of the instrument of ratification.

### COMMENTARY ON THE TREATY

**I**T was at once evident to the Committee that the starting point for the discussion of the problem in America was fundamentally different from the basis of European discussion. **In the United States the main interest lies in policies of disarmament and the "outlawry of war"; in Europe, especially on the Continent, and more especially in these post-war years, the problem of national security takes precedence.**

The task of the American committee was to harmonize these two divergent points of view and, ultimately, a draft Treaty was drawn up. The Treaty which the Council is now circulating to the fifty-four governments of the League of Nations **offers for the first time in the history of international law, a comprehensive definition of aggression, and at the same time, outlaws the aggressor.**

The definition of aggression is a negative one. **Any state refusing summons by another state before the Permanent Court of International Justice on a charge of aggression, thereby admits its guilt.** Some reply must be made within four days or the other Powers are free automatically to apply the measure of enforcement indicated in the Treaty. The four-day time limit is inserted to prevent an aggressor from continuing war-like preparations while trifling with an appeal to the Court. It safeguards the security of the complainant's power.

The Court is not called upon to decide political and non-justiciable



issues as to matters of policy. It has to find whether or not certain overt acts have been committed and whether they violate this contract. In order to define this class of acts **a world conference is to assemble frequently and its experts are to form a permanent commission.**

Again, **the problem of enforcement has been met** by an entirely new method which does not involve the government of any country further than its own interests dictate, and yet, it secures an adequate pressure upon the aggressor by threatening the safety of its business interests.

**There is no surrender of national sovereignty.**

No troops are to be sent abroad on punitive expeditions or for any other purpose, at the behest of any Council of the League or other outside Power. The method of enforcement lies entirely in the economic field.

In the economic sanction, the High Contracting Parties do not bind themselves by this Treaty to do anything contrary to their own interests. But they are **free to do all manner of things as against an aggressor with reference to its property rights on the high seas or within their own frontiers.** In a word, **the aggressor is outlawed,** and, as such, deprived of any security for his property in other lands. Automatically he loses his own security throughout the whole world.

**The effect of this outlawry upon business interests would be instant.** No trader could be sure that his ships would receive entry into the ports of another Signatory or that his investments in their keeping would not be immediately attached. In a world built upon a basis of credit, the result would be for the aggressor unavoidable panic, of greater or less degree. The effect of this would at once be registered in the fall in exchange value of the currency of the aggressor state.

It should be remembered that this is not the full extent of the economic sanction for the aggressor state. Sooner or later it will have to pay the whole costs of reparations and of war expenses to both the victims of its aggression, and those Powers, even neutral, which have suffered by the economic displacement of the act of aggression. It will thus be seen that the enforcement of the Treaty brings into play the two experiences of Europe which have registered most keenly in the mind of the common people as well as governments the disastrous effects of war, namely in the fall of exchange on the one hand and the infliction of reparation penalties upon the other. The whole economic lesson of the World War, the lesson burned into the consciousness and conscience of Europe as nothing else has ever been, is thus brought to bear upon the prevention of war and the preparations for war in the future.

With reference to the adherence of the United States to this Treaty, it is evident that some verbal changes are necessary so long as the United States is not a member of the League of Nations, since this Treaty has been drawn up for those states which are within the League. But **the general principles embodied in the Treaty should not meet with technical objections upon the part of the United States** and the verbal changes can be easily made by simply eliminating the United States from those Articles of the Treaty which mention the Council or the League, or by accepting the position of a mere associate. There could be no harm, for instance, in accepting the Secretariat of the League as the body which should register treaties. Its usefulness as an agent of public diplomacy is already demonstrated and involves no entanglements. Over five hundred treaties have been registered in the five years of the League's existence, some with Powers outside the League. It is simply a formality for securing publicity and is the only international device of the kind that has yet been tried. Since treaties involving the United States are discussed in the Senate, however, even this item need not be maintained in the American edition of the Treaty; but it would be inconceivable that the trivial difficulties of making slight verbal changes should ever stand in the way of favorable action by the United States upon the question as a whole. This Treaty not only embodies ideals of those most anxious that America should play its part in the peaceful settlement of international disputes, but it also carefully avoids all those elements of the League of Nations as outlined in the Covenant which have met with most opposition in the United States.

**In short, this Treaty leaves the United States, like all other Signatory Powers, completely free to decide whether and to what extent it will participate in any given case.**

The treaty is just as applicable to Germany and Russia as it is to the United States, in that Powers can sign it who are not members of the League. The members of the League would simply use more of the machinery of the League than the non-members, in that they would have as well a means for straightening out political controversies and provocative acts which lead to armament. This Treaty does not include that kind of action at all. It deals only with the question of armament.

**Neither is it a general Treaty of compulsory arbitration. The question to come before the Court is not political, but whether or not one of the parties to a contract has broken it.** The Permanent Advisory Conference and not the Court will consider the formulation of the conditions to be observed in applying the Treaty.

The Treaty is not modelled after the Washington treaties, in which the limitation of armament was based upon a set ratio between different countries. Experts, especially in chemical warfare, point out that such ratios can not be either ascertained or applied at present. Therefore, the Treaty calls into existence **an international advisory conference on disarmament which is to meet periodically at least once every three years**, to keep pace with the progress of invention and discovery. This conference is to be supplied with a **technical investigating committee responsible to the conference**. The necessity of having a conference on disarmament is recognized on all hands. But what is needed is something more; the conference must be periodic. The experience of the Washington Conference shows that if a conference makes no provision for its own re-assembling, the subsequent recrimination between the interested parties may tend to make matters worse instead of better. On the other hand, **if a conference recurs automatically, the questions in dispute can be brought up without involving the national honor of any of the parties to it.**

In providing a commission to facilitate the interchange of full and frank information as to the scale of the armaments, the military, naval and air programs, etc., of the High Contracting Parties, the Treaty embodies not only a provision of the Covenant of the League of Nations but a device which at the Peace Conference at Paris was strongly urged by Marshal Foch in the interests of the pacification of Europe. The commission charged with the duty of investigating how the various High Contracting Parties were carrying out the terms of this Treaty could hardly be objected to by a Power which entered into it in good faith. In any case, it is the opinion of highly qualified military experts in the United States that this country would have no objection to the adoption of the plan so earnestly advocated by Marshal Foch at the Peace Conference.

The relation of the Council of the League of Nations to the new machinery which it is proposed to set up should be clearly understood. The Council is to receive the reports of the Commission of Inquiry and **express its opinions** concerning them. **But it can not call out a League army to enforce peace.** The Treaty not only makes no provision for such action; its whole tenor is in another direction. And there is no provision whatever for any such army. According to the Treaty, the Council would tend to become more and more an instrument of conciliation and its administrative functions in this regard would become inoperative. **There is no superstate left in the structure of this Treaty.** On the other hand, the sphere of operation of the Council is a large and important one. **Its function, in the political**

**sphere is left untouched.** It can still serve to lessen the dangers arising from provocative political policies. This Treaty does not touch upon any of those topics. Consequently the sphere of action of the Council does not fully appear. **The Treaty deals only with security and disarmament.** It is an attempt to reduce this dual problem to the dimensions of a contract dealing with strictly technical matters. The Council of the League is not called upon to act outside its legitimate sphere in the enforcement of the Treaty or in its administration. Instead of regarding this limitation of its functions as lessening its validity, however, it in reality strengthens its position in the sphere in which it is necessary and legitimate. For nothing could injure an institution more than to clothe it with large theoretic powers which can not be applied in the hour of need or which may be defied by a recalcitrant government.

Finally, the Treaty makes provision for including other treaties between two or more Powers either as ententes or alliances, when they are designed solely for defensive purposes, enabling the parties to them to lessen their armaments. A tendency towards the old "balance of power" is perhaps inherent in this part of the Treaty. But the Treaty safeguards any trend in this direction **by placing a great premium upon publicity of engagements as over against secret intrigues.** To avoid the danger of including treaties which were in spirit contrary to the purpose of this Treaty, this remarkable device has been inserted taken from the proposals of Colonel Réquin, French military technical expert, in the Treaty of Mutual Assistance prepared for the League of Nations. All publicly announced treaties which have been accepted by the Council of the League of Nations and scrutinized by it as coming within the meaning of this Treaty and of the Covenant, may be carried out automatically. There is no need of waiting to secure the consent of the Council, Court, or any other body to carry out their terms. This provision is of the greatest possible importance in the hour of danger, for "in all other cases," the Signatories must first "inform the Council of the measures which they are contemplating," and await its action. This means that **where there are secret agreements or where acts of aggression arise, there is inevitable delay,** for the remedy lies through the machinery of the League of Nations and not by direct action.

No greater incentive for publicity of engagements could be found than this which makes the security of the High Contracting Parties dependent to a large degree upon having announced their engagements to the world through registration with the League of Nations. Freedom for automatic and immediate action may easily be, in cases like these, a matter of life and death.